

Advisory Committee on Rules 123 and 125, Rules of the Supreme Court
MEETING MINUTES
October 18, 2012
Conference Room 119B
State Courts Building, 1501 W. Washington, Phoenix, AZ 85007

Present: Mike Baumstark - Chair, David Bodney, Judge Carey S. Hyatt, Michael K. Jeanes, Gary Krcmarik, Judge Robert Carter Olson, Patricia Sallen.

Telephone: Emily Johnston.

Absent/Excused: Yvonne R. Hunter, Patricia Noland.

Guests: Aaron Nash (Maricopa County Clerk's Office).

Staff: Kay Radwanski (AOC), Melinda Hardman (AOC), Kym Lopez (AOC).

CALL TO ORDER

With a quorum present, the October 18, 2012, meeting of the Advisory Committee on Supreme Court Rules 123 and 125 was called to order by Mike Baumstark, Chair. Member and staff introductions were made around the room. Mr. Baumstark reviewed the charge of the committee.

PRELIMINARY DECISIONS

Family law orders and rulings

The committee consensus is to make no changes to Rule 125. Maricopa County has implemented a procedural change (to be in place no later than 12/31/12) by which under-advisement rulings will be separated from in-court rulings and will not be posted on the court's website. The only minute entries that will be posted are those that are related to an open-court hearing.

A suggestion was made to require a disclaimer on court websites stating there may be other types of orders connected to a case. This disclaimer could be stated in a comment to Rule 123 explaining that although orders from the bench may be published as minute entries, there may be other orders that are not published online and are only available at the courthouse.

Federal law on Internet publication of protective order information

Language mirroring federal law will be used in the rule.

Probate

Four data elements (party names, case number, judicial assignment, and attorney names) are allowed to be published. The committee was not inclined to expand online publication of probate case information.

PETITION LANGUAGE

Mr. Baumstark presented the draft rule petition and appendix for the committee's review. It was recommended that the wording in Rule 123(C)(i) be changed to read: *Members of the public may be provided remote electronic access, pursuant to ACJA § 1-604, to all of the following categories of case records unless sealed or otherwise made confidential by rule or law:*

The committee agreed with all other changes indicated in the draft.

MENTAL HEALTH

Members discussed mental health cases and the extent to which case information should be available online. Highlights included:

- Committee consensus is that only the four data elements (party names, case number, judicial assignment, and attorney names) should be available as Rule 123 currently allows.
- There is concern as to whether the four data elements will always be available online. For example, if a person is involved in a Title 36 hearing and is found to be competent, this information would still be available online.
- An effort is being made to remove the stigma around “mental health.” Limiting case information to four data elements is a protection being provided to this segment of the population but not to people who are subject to guardianships and conservatorships. By treating mental health cases differently, the stigma about mental health issues may be perpetuated.
- The public assumes that health care information is private. Health care information is confidential, but making information available about mental health appears to be in conflict with that assumption.
- Research conducted since last meeting: Legal stated that HIPPA laws do not apply to the courts.
- It was proposed that the petition should make reference to discussion of the extent to which mental health case information should be accessible online and the committee’s decision that the four data elements should continue to be available.
- Attorneys and legal services organizations often use case information to determine what clients they choose to represent. If they do not have access to case information, they will not be able to rely on that information in determining whether to take on a new client.

APPROVAL OF MINUTES

The August 27, 2012 meeting minutes were presented for approval.

MOTION: Gary Krcmarik motioned to approve the August 27, 2012 minutes as presented.

SECOND: Judge Robert Olsen.

VOTE: Approved unanimously.

RULE PETITION

The rule petition must be filed by January 10, 2013, and needs to be taken before the Arizona Judicial Council (AJC) at its December meeting. The committee agreed to circulate the petition

by e-mail for final comments. The consensus of the committee was that Mr. Baumstark can incorporate any final changes or comments received and then file the rule petition on behalf of the committee.

MINUTE ENTRY

Maricopa County has made a procedural change on how minute entries are handled in their court. While no rule change is necessary, Maricopa County is changing its practice to address this issue and comply with the rules.

Meeting adjourned at 11:27 a.m.